

REMARKS

Reconsideration is requested.

The Examiner's comments relating to priority are noted. The Examiner is requested to note however that the priority documents were received from the International Bureau as confirmed in the attached copy of FORM PCT/DO/EO/903 dated June 16, 1997, which was mailed in connection with the parent application Serial No. 08/836,075. Moreover, Examiner Zeman confirmed receipt of the priority documents from the International Bureau in Examiner Zeman's Notice of Allowability issued in the parent application Serial No. 08/836,075 (copy attached). The Examiner is also requested to see the attached copy of MPEP § 201.14(b), which confirms that it is not necessary to file an additional certified copy in later filed applications. The Examiner is requested to accord the applicant's benefit of the claimed priority applications which have been properly referred to and copies provided in the manner required by the Rules and the MPEP. The Examiner is requested to use the resources of the Patent Office to obtain copies of any documents which the Patent Office has misplaced and/or lost. The Examiner is requested to contact the undersigned by telephone in the event anything further is required in this regard.

The claims have been amended to obviate the Section 101 rejection of claims 63-65 and 69 stated on page 4 of the Office Action dated July 28, 2004. Withdrawal of the Section 101 rejection is requested.

The Section 112, second paragraph, rejection of claims 64, 66, 67, 68 and 70 stated on page 4 of the Office Action dated July 28, 2004, is not completely understood by the applicants as it is believed that only one HCV polyprotein, which is the product of

translation of a single large open reading frame of the HCV genome, exists. Moreover, a definition of "HCV polyprotein" can be found, for example, on page 9, lines 7-12 of the specification. While not believed to be required, the claims have been amended to indicate the particular part of the HCV polyprotein which is the subject matter of the claims.

Reconsideration and withdrawal of the Section 112, second paragraph, rejection of claims 64, 66, 67, 68 and 70 are requested.

The Section 102 rejection of claims 63, 64 and 65 over van Doorn (Journal of Hepatology, July 1994, Vol. 21(1), pages 122-129), is traversed.

As noted above, the certified copies of the priority applications have been received by the Patent Office and further copies of the same are not required according to MPEP. The fact that the Examiner is not able to find the documents, as appears to be the case from the Examiner's comments, is not an error which the applicants should be required to correct. The Patent Office is believed to have the means to obtain further copies from either the International Bureau or commercial markets in the event that the Patent Office has misplaced the originally-obtained certified copies of the priority documents. The Examiner's comments therefore in paragraph 8 on page 5 of the Office Action dated July 28, 2004, are not believed to be germane.

More importantly, the cited reference of Van Doorn discloses in Figure 2, 5'UTR sequences. The sequences of the current claims however comprise a specified Core/E1 sequence not disclosed or suggested by Van Doorn et al (1994), cited by the Examiner. The Core/E1 sequences were, however disclosed by Van Doorn et al (Journal of General Virology 76, 1871-1876 (1995)) and more specifically in the

GenBank accession No. L39317, which is referred to in the attachment to the Examiner's Office Action dated April 28, 2004. The publication of the relevant Van Doorn et al document occurred however in July 1995, which is after the priority filing date of EP 94870166.9 (i.e., filed October 21, 1994). The Van Doorn et al 1994 reference cited by the Examiner is therefore not believed to be relevant to the presently claimed invention. Moreover, the Van Doorn et al 1995 reference is not believed to be citable prior art to the presently claimed invention. Copies of the Van Doorn 1994 and 1995 references are attached for the Examiner's convenience and consideration. The Van Doorn 1994 reference is of record in the present application and was considered by the Examiner on March 3, 2003. The abstract and citation of the sequence from Van Doorn 1995 is of record and was considered by the Examiner as well on March 3, 2003. A further listing of these references is provided on the attached PTO-1449 Form and the Examiner is requested to further confirm consideration of the same. Reconsideration and withdrawal of the Section 102 rejection based on Van Doorn (1994) is requested.

The PTO 892 Form received with the Office Action of July 28, 2004, merely lists as references considered "sequence search reports from PTO". The undersigned respectfully submits that the Patent Office of Quality Review is unlikely to approve of such an undefined listing of references considered. The Examiner is requested to provide further detailed information as to the references and/or information which were considered in a manner which will be accepted by the Patent Office's Office of Publications and/or Quality Review.

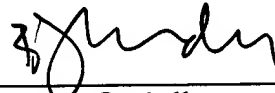
MAERTENS, et al.
Appl. No. 09/851,138
October 28, 2004

The claims are submitted to be in condition for allowance and a Notice to that effect is requested. The Examiner is requested to contact the undersigned if anything further is required in this regard.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: _____



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08/836075

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INNS: 004



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Address: ASSISTANT COMMISSIONER FOR PATENTS
Washington, D.C. 20231

#2

U.S. APPLICATION NO.

FIRST NAMED APPLICANT

AFTER NAMED APPLICANT

08/836,075

MAERTENS

G

INNS: 004/KAM

INTERNATIONAL APPLICATION NO.

5611

PCT/EP95/04155

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EX. 1

EX. 2

10/23/95

10/21/94

DATE MAILED

06/16/97

NOTIFICATION OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371
AND 37 CFR 1.494 OR 1.495

1. The applicant is hereby advised that the United States Patent and Trademark Office in its capacity as ☐ a Designated Office (37 CFR 1.494), ☒ an Elected Office (37 CFR 1.495), has determined that the above identified international application has met the requirements of 35 U.S.C. 371, and is ACCEPTED for national patentability examination in the United States Patent and Trademark Office.

2. The United States Application Number assigned to the application is shown above and the relevant dates are:

21 APR 1997
35 U.S.C. 102(e) DATE

21 APR 1997
DATE OF RECEIPT OF
35 U.S.C. 371 REQUIREMENTS

REC'D - A.W.D.

JUN 19 1997

DOCKET DE

A Filing Receipt (PTO-103X) will be issued for the present application in due course. THE DATE APPEARING ON THE FILING RECEIPT AS THE "FILING DATE" IS THE DATE ON WHICH THE LAST OF THE 35 U.S.C. 371(C) REQUIREMENTS HAS BEEN RECEIVED IN THE OFFICE. THIS DATE IS SHOWN ABOVE. The filing date of the above identified application is the international filing date of the international application (Article 11(3) and 35 U.S.C. 363). Once the Filing Receipt has been received, send all correspondence to the Group Art Unit designated thereon.

3. ☐ A request for immediate examination under 35 U.S.C. 371(f) was received on _____ and the application will be examined in turn.

4. The following items have been received:

- ☒ U.S. Basic National Fee.
- ☒ Copy of the international application in:
 - ☐ a non-English language.
 - ☒ English.
- ☐ Translation of the international application into English.
- ☒ Oath or Declaration of inventor(s) for DO/EO/US.
- ☒ Copy of Article 19 amendments. ☐ Translation of Article 19 amendments into English.

The Article 19 amendments ☐ have ☐ have not been entered.
- ☒ The International Preliminary Examination Report in English and its Annexes, if any.
- ☒ Translation of Annexes to the International Preliminary Examination Report into English.

The Annexes ☐ have ☐ have not been entered.
- ☒ Preliminary amendment(s) filed 21 APR 1997 and _____
- ☒ Information Disclosure Statement(s) filed _____ and _____
- ☒ Assignment document.
- ☒ Power of Attorney and/or Change of Address.
- ☐ Substitute specification filed _____
- ☒ Verified Statement Claiming Small Entity Status.
- ☒ Priority Document.
- ☒ Copy of the International Search Report ☒ and copies of the references cited therein.
- ☐ Other:

Status Inquiring
U.S. Filing receipt
DOCKETED
FOR 12-16-97
BY W. J. Wallace
CHECKED BY W. J. Wallace

Applicant is reminded that any communication to the United States Patent and Trademark Office must be mailed to the address given in the heading and include the U.S. application no. shown above. (37 CFR 1.5)

Vonda M. Wallace
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Telephone: (703)

305-3736

FORM PCT/DO/EO/903 (September 1996)

BEST AVAILABLE COPY

Notice of Allowability

Application No.

08/836,075

Applicant(s)

Maertens et al.

Examiner

Mary K Zeman

Group Art Unit

1643



All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance and Issue Fee Due or other appropriate communication will be mailed in due course.

☒ This communication is responsive to the response filed 3/15/99

☒ The allowed claim(s) is/are 63-74

☐ The drawings filed on _____ are acceptable.

☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☒ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☒ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

A SHORTENED STATUTORY PERIOD FOR RESPONSE to comply with the requirements noted below is set to EXPIRE **THREE MONTHS** FROM THE "DATE MAILED" of this Office action. Failure to timely comply will result in ABANDONMENT of this application. Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

☐ Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL APPLICATION, PTO-152, which discloses that the oath or declaration is deficient. A SUBSTITUTE OATH OR DECLARATION IS REQUIRED.

☒ Applicant MUST submit NEW FORMAL DRAWINGS

☐ because the originally filed drawings were declared by applicant to be informal.

☒ including changes required by the Notice of Draftsperson's Patent Drawing Review, PTO-948, attached hereto or to Paper No. 10

☐ including changes required by the proposed drawing correction filed on _____, which has been approved by the examiner.

☐ including changes required by the attached Examiner's Amendment/Comment.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the reverse side of the drawings. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

☐ Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Any response to this letter should include, in the upper right hand corner, the APPLICATION NUMBER (SERIES CODE/SERIAL NUMBER). If applicant has received a Notice of Allowance and Issue Fee Due, the ISSUE BATCH NUMBER and DATE of the NOTICE OF ALLOWANCE should also be included.

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

☒ Interview Summary, PTO-413

☒ Examiner's Amendment/Comment

☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material

☒ Examiner's Statement of Reasons for Allowance

REC'D. - A. W. & D.

JUN 15 1999

HOUSTON DOCKETING DEPT.

BEST AVAILABLE COPY